WILLADEAN PATTON
ESSEX MINERALS, INC.
NATIONAL BULK CARRIERS, INC.

IBLA 77-185 Decided October 21, 1977

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, rejecting prospecting permit applications W-47584 and W-47585.

Affirmed.

1. Applications and entries: Generally--Mineral Lands: Prospecting Permits

   An applicant for prospecting permits is not the "sole party in interest," within the meaning of 43 CFR 3500.0-5(a), where another party participates in the preparation and filing of the application, and where an agreement exists at the time of filing under which the applicant is bound to assign to the other party any advantages gained by him from the applications.

2. Applications and Entries: Filing--Mineral Lands: Prospecting Permits

   Where a party is not the sole party in interest in applications for prospecting permits, his applications must be rejected under 43 CFR 3511.2-4(a)(7) if they do not comply with the mandatory provisions of 43 CFR 3502.7, which require submission of statements of all parties' respective interests and of any agreement between them, and submission of evidence of the qualifications of all parties to hold prospecting permits.

3. Application and Entries: Filing--Mineral Lands: Prospecting Permits

Where a party files applications for prospecting permits as an attorney-in-fact of another party, he must disclose his status as an agent by designating his principal as the "applicant" on the application forms, and must, under 43 CFR 3502.3-1 and 3502.6-1(a), file statements of qualifications for both himself and his principal, as well as a copy of the agreement establishing his power of attorney, or his applications must be rejected under 43 CFR 3511.2-4(a)(7).

4. Estoppel--Geological Survey

Estoppel will not be applied against the Government when the sole basis for so doing is a statement by an applicant for a prospecting permit that a Geological Survey employee indicated that he could file the application in his own name, since this statement was not necessarily a misrepresentation, and since in any event the applicant had no right to rely on this statement because the Geological Survey is not the agency authorized to make representations as to the proper filing of prospecting applications.

APPEARANCES: Michael J. Esler and Eric R. Haessler, Esqs., Haessler, Stamer & Esler, Portland, Oregon, for Willadeen Patton; Allen B. Hollet, President of Essex Minerals, Inc., Vice President of National Bulk Carriers, Inc., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On August 27, 1974, the late Carmal Patton filed prospecting permit applications W-47584 and W-47585, seeking rights to prospect for sodium (trona) on certain lands in Wyoming. On September 6, 1974, Mr. Patton executed a document assigning in blank all of his rights in these applications, which he mailed to National Bulk Carriers, Inc. (N.B.C.), with instructions that it should designate the name of the assignee as it deemed appropriate. Mr. Patton died on March 13, 1975, while his applications were pending before the Wyoming State Office of the Bureau of Land Management (BLM). On August 20, 1975, N.B.C., having designated Essex Minerals, Inc. (Essex), its wholly-owned subsidiary, as the assignee, filed with the BLM a copy of the assignment from Mr. Patton on his interests in

these applications. On January 18, 1977, the BLM issued a decision rejecting these applications because Mr. Patton had erroneously stated in them that he was the sole party in interest and that he had not made the applications on behalf of a corporation or other legal entity, and because he was acting as an "undisclosed agent" for N.B.C. at the time he filed these applications. This decision has been appealed by Willadean Patton, Mr. Patton's widow, and by N.B.C./Essex.

The standing of N.B.C./Essex to appeal stems from its status as the would-be assignee of Mr. Patton's interest in these applications. If this assignment were valid, N.B.C./Essex, as the assignee, would be entitled to receive whatever benefits were granted pursuant to these applications. N.B.C./Essex thus has a possible interest in these applications which is adversely affected by the BLM's decision not to allow them and, therefore, has standing here.

Willadean Patton's standing stems from her status as Carmal Patton's devisee, per 43 CFR 3502.8-1(b)(1). If the assignment of his interest in these applications were invalid, Mrs. Patton would succeed her late husband as the holder of this interest instead of Essex. Thus, Mrs. Patton also has a possible interest in these applications which is adversely affected by the BLM's decision and, therefore, has standing here as well.

It is her contention that Carmal Patton had identified the subject potential deposits long prior to his employment by N.B.C., and that when he filed the subject prospecting permits in his own name he was truly acting for himself alone, and N.B.C. had no right, claim or interest in the applications. She suggests further that the assignments to N.B.C. were somehow procured by fraud or coercion, and she maintains that the applications are in good order as submitted, so that the permits should issue to her alone and the assignments to N.B.C. should be disapproved. However, the evidence of record, which will be discussed infra, does not support these assertions. In fact, the evidence compels a contrary conclusion. Therefore, Willadean Patton's appeal must be denied.

Prior to his filing these applications, Mr. Patton was employed as a consultant by N.B.C. to study certain parts of Wyoming in order determine mineral potential there. On August 12, 1974, he wrote to Allen B. Hollett of N.B.C. concerning studies which he (Patton) had made of trona potential in Wyoming. This letter indicates that N.B.C. had previously requested that the applicant determine for it the location of lands with good trona potential, and that the applicant already considered the proposed filing of applications for prospecting permits on the land in question a joint venture between himself and N.B.C.: "Listed below are two outstanding potentials on which I recommend that we file prospecting permit applications: [There follows a list of the land in question.]" On August 28, 1974, the applicant informed N.B.C. that he had filed the applications in

question, that he intended to assign all of his interest to N.B.C. at the appropriate time, and that he would include on his next invoice bills for his services and for the expenses incurred by him in preparing the applications. On September 3, 1974, the applicant presented N.B.C. with a bill for his services in connection with filing the trona applications on August 27, 1974, and for the filing fees and advance rental required to be submitted with these prospecting permit applications. N.B.C. approved this bill for payment on September 6, 1974.

From this information, it is apparent that when the applications were filed, Mr. Patton and N.B.C. were parties to an agreement under which Patton agreed to assemble information concerning areas with probable mineral deposits, to file appropriate applications for these lands, and to assign to N.B.C. all rights gained by these applications, in return for cash compensation by N.B.C. The letter of August 12, 1974, indicates that Mr. Patton had agreed to file these applications on behalf of N.B.C. prior to the filing of the applications, and the invoice for his service indicates that the parties had previously agreed to a cash compensation for this service of $300 per day. The letter of August 28, 1974, indicates that it was understood under the terms of this agreement that Mr. Patton was obliged to assign all of his interest in these applications to N.B.C. Moreover, N.B.C./Essex admits in its statement of reasons that, at the time of filing of these applications, "Mr. Patton was our consultant and was working exclusively for our benefit on trona; [and h]is sole interest in the trona was to be paid on a per diem basis for services rendered." N.B.C./Essex also notes that Patton himself had admitted to a Geological Survey representative when filing these applications that he was doing so as a nominee for N.B.C. 1/

[1] From the foregoing, it is clear that there existed at the time of the filing of these applications an agreement between Mr. Patton and N.B.C. under the terms of which he was obligated to give up to N.B.C. or its designated affiliate all advantage or benefit from the prospecting permit applications. "Sole party in interest" is defined in 43 CFR 3500.0-5(a), which provides in part as follows:

> A sole party in interest in * * * an application for * * * a permit is a party who is and will be vested with all legal and equitable rights under the lease or permit. No one is, or shall be deemed to be, a

1/ The assertion by N.B.C./Essex that an agreement entered into on October 3, 1973, was "the only compensation arrangement that was ever discussed with Mr. Patton" cannot be correct, or N.B.C. would have been under no obligation to recognize Mr. Patton's bill of September 3, 1974, which the record indicates it paid without question.

> sole party in interest with respect to a * * * permit in which any other party has any of the interests described in this section.
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> Any claim or any prospective or future claim to an advantage or benefit from a * * * permit, and any participation or any defined or undefined share in any increments, issues, or which may be derived from or which may accrue in any manner from the * * * permit based upon or pursuant to any agreement or understanding existing at the time when the application is filed, is deemed to constitute an "interest" in such lease or permit.

Clearly, N.B.C. participated in the applications in question, had a claim to an advantage from the permits applied for, and had a defined share accruing from the permits applied for pursuant to the agreement with the applicant. Accordingly, Patton was not the sole party in interest in these applications.

[2] 43 CFR 3502.7 sets out the application requirements when an applicant is not the sole party in interest:

> Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

The applications in question do not name N.B.C. as an interested party, do not include statements setting out the nature and extent of N.B.C.'s and Patton's respective interests or of the agreement between them, and do not include evidence of N.B.C.'s qualifications to hold prospecting permits. Clearly, the requirements of this section were not met in these applications.

43 CFR 3511.2-4(a)(7) provides that an application must be rejected if there is noncompliance with the requirements specified

in subpart 3502. An application for a prospecting permit which does not comply with the mandatory provisions of the regulations must be rejected. Frank Allison, 3 IBLA 317 (1971). Accordingly, we hold that the BLM properly rejected these applications.

[3] It is apparent that N.B.C./Essex intended that Mr. Patton serve as its agent in preparing and filing these applications. In order to act as N.B.C.'s agent in these applications, Mr. Patton should have designated N.B.C. (or Essex), not himself, as the "applicant" on the application form. Patton's name should properly have been designated on the forms as "attorney-in-fact." See Frank Allison, supra. Under 43 CFR 3502.3-1 and 3502.6-1(a), as N.B.C.'s attorney-in-fact, Patton was required to file statements of qualifications both for N.B.C. and for himself, as well as a copy of the agreement establishing his power of attorney. He did not do so. Accordingly, since 43 CFR 3511.2-4(a)(7) requires rejection of applications not in compliance with the requirements of subpart 3502, we hold that the applications would have been properly rejected on these grounds as well.

[4] N.B.C./Essex asserts that the improprieties in Mr. Patton's applications should be overlooked because Patton had informed it on August 28, 1974, that "[t]his filing in my name was made per the suggestion of our local U.S.G.S. representative." What N.B.C./Essex suggests is that the Government be estopped from rejecting these applications because the irregularities therein were caused by a misrepresentation by the government employee. We reject this argument.

Patton's statement of August 28, 1974, is the only evidence suggesting that there may be grounds for an estoppel. This statement does not specify the circumstances in which the Geological Survey representative allegedly made his suggestion that the applications be filed in Patton's name. We cannot tell if at the time he made this suggestion, the Geological Survey representative even knew of N.B.C.'s interest, or if he knew that Patton was not going to disclose this interest in the applications. In either of these cases, this suggestion would not have been a misrepresentation and would not be grounds for estoppel. N.B.C./Essex maintains that this statement "clearly means that at least one branch of the United States Government had been made aware that Mr. Patton was function[ing] as a nominee for 'someone' but nonetheless suggested that Mr. Patton file the Applications in his own name." This interpretation assumes too much, and we accordingly reject it.

Even if we concluded that this ambiguous statement means, as N.B.C./Essex maintains, that the Geological Survey representative knew of N.B.C.'s interest and that Patton was not going to disclose this interest, yet advised Patton that he could file the application, we could not invoke estoppel here. Patton had no right to rely on any representation concerning the acceptability of these applications by a Geological Survey representative. The Geological Survey

is not the agency authorized to adjudicate or enforce administrative procedural requirements regarding permit applications, or to make representations concerning these procedural requirements, and Patton was not entitled to rely on any representation to this effect.

Equitable estoppel is not appropriate in the absence of a misrepresentation or concealment of material facts by an agent of the Government who was authorized to make such representations. Siesta Investments, Inc., 28 IBLA 118, 122 (1976); United States v. A. B. Fleming, 20 IBLA 83, 97 (1975). It is questionable that a misrepresentation was made here, and it is certain that the Geological Survey representative would not have been authorized to make such a representation. Accordingly, equitable estoppel is not appropriate here. 2/

In view of our holding that these applications were properly rejected and thus created no rights in the land in question which might have been assigned, it is unnecessary to consider the validity of the assignment of September 6, 1974, from Mr. Patton to Essex. We note, however, that N.B.C./Essex failed to file a copy of this assignment with the BLM within 30 days of its final execution by Patton, in apparent violation of 43 CFR 3506.3-1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

2/ The correspondence suggests that neither Patton nor N.B.C. deliberately intended to violate the regulations, but did so out of ignorance of them. This, however, does not make the applications any more acceptable.